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APR 15 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 15, 1993

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: The Coalition For Wireless Cable -
28 GHz Reply Comments
CC Docket No. 92-297

Dear Ms. Searcy:

On behalf of our clients, The Coalition for Wireless Cable, there is submitted herewith, pursuant to Section 1.419 of the Commission's rules, an original and nine copies of the Coalition for Wireless Cable's Reply Comments regarding the 28 GHz rulemaking.

Please direct any inquiry concerning this submission to the undersigned.

Very truly yours,



Robyn G. Nietert
Steven E. Swenson

Enclosures
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Rulemaking to Amend Part 1 and)
Part 21 of the Commission's Rules)
to Redesignate the 27.5-29.5 GHz)
Frequency Band and to Establish)
Rules and Policies for Local)
Multipoint Distribution Service;)

CC Docket No. 92-297

RM-7872; RM-7722

To: The Commission)

REPLY COMMENTS OF COALITION FOR WIRELESS CABLE

The Coalition for Wireless Cable¹ ("The Coalition"), by its attorneys, hereby replies to certain of the Comments filed in response to the Commission's Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration, FCC 92-538, released January 8, 1993 ("NPRM") in the above-captioned proceeding. The Coalition applauds the Commission's efforts in this proceeding. The licensing and regulatory policies addressed in the NPRM are crucial to the continued expansion of the wireless cable industry and can compliment the Commission's efforts to bring competition to the entrenched cable industry.

I. **The Public Interest Is Best Served by A Set-Aside For Existing Wireless Operators Who Can Assure Prompt LMDS Service.**

As reflected in its own Comments, the Coalition concurs with the Wireless Cable Association (WCA) in advocating a set-aside of one LMDS license per service area for use by existing wireless

¹ The Coalition is comprised of the Grand Alliance Partnerships which are tentative selectees, licensees or operators in approximately 25 markets throughout the United States.

cable operators to augment and expand their services. LMDS technology has great potential as a means of providing multichannel video programming and other ancillary video and non-video services. It therefore has the potential to compliment the wireless cable industry's efforts to bring real competition to cable in the near term.

A set-aside for existing wireless operators is imperative to accomplish two primary goals: First, a set-aside, which is narrowly-tailored for wireless operators who can offer assurance of prompt LMDS service, will expedite the implementation of LMDS service to consumers. Wireless entrepreneurs who have followed the Commission's call to bring competition to the marketplace by building wireless systems have demonstrated both a commitment to the industry and the expertise necessary to successfully operate LMDS systems.

Second, a set-aside will enhance wireless cable as a competitive force in the marketplace by providing the means to add channel capacity and offer new ancillary services. Wireless cable has proven its ability to compete in numerous markets. As the Commission has recently recognized, in markets where competition with cable exists, the rates for cable are nearly ten percent (10%) less than in markets where no competition exists.² Unfortunately, the majority of cable consumers have no opportunity to select between competing cable systems, and the industry itself is

² See News Release, Report No. 2381, released April 1, 1993, "Cable Systems To Reduce Rates To Competitive Levels," (MM Docket No. 92-266).

becoming increasingly consolidated and monopolistic. In most markets, rates for cable service have increased dramatically while service and quality have deteriorated. The Cable Television Consumer Protection and Competition Act of ("1992 Cable Act") will offer some relief; but competition in the marketplace is clearly preferable to government regulation.

In order to achieve the goals of expediting LMDS service to consumers and enhancing competition, the Coalition made clear in its initial comments that a set-aside allocation must be limited to wireless operators who can offer a reasonable expectation of prompt LMDS service. The Coalition advocated modeling a reasonable assurance standard after that adopted by the Commission in its recent decision to allow currently authorized wireless operators (and tentative selectees against whom no petition was on file).

Given the realities of the wireless cable market, and in light of the current backlog and freeze at the Commission, the Coalition suggests a more practical means of demonstrating reasonable assurance of prompt LMDS service would be to require that, to be eligible for a set-aside, a wireless operator must: (1) hold a conditional license, license, or an operating agreement, or must be tentative selectee (as to which no petition to deny has been filed) for at least one MMDS channel group; and (2) have either licenses, operating agreements or pending applications which would result in the operator having access to an additional six MDS, MMDS or OFS channels in the market, for a total of 10 channels in the market to be used in conjunction with the LMDS system.⁴

It is beyond doubt that a wireless operator who has expended the resources to acquire licenses, operating agreements and/or pending applications for 10 channels in a market is committed to building and operating its wireless system. A wireless operator demonstrating this commitment and expertise will expeditiously develop LMDS in order to augment its channel capacity and offer new services. A set-aside tailored this way therefore is a practical means of expediting LMDS service to consumers. This approach will also keep unscrupulous speculators and greenmailers from frustrating the provision of LMDS to consumers.

In this regard, a set-aside does not constitute a handout at public expense. To the contrary, the set-aside proposed herein is

⁴ The Coalition agrees that a higher threshold would be warranted were it not for the current backlog at the Commission and freeze on the filing for new MMDS and ITFS authorizations.

a narrowly-tailored means of assuring that LMDS is expeditiously made available to consumers and of strengthening wireless cable as a viable competitor with wired cable systems. But to further assure that such a set-aside achieves the goals articulated above, the Coalition endorses WCA's recommendations that the set-aside have a one year sunset provision; that wireless operators seeking a set-aside be required to meet the Commission's other legal, technical and financial qualifications to operate LMDS systems; that applicants be subject to public notice, the filing of petitions to deny and a public interest finding; and that a licensee receiving a set-aside allocation be subject to judicial review and to renewal challenge if the licensee has not served the public interest.

II. Cross-Ownership Restrictions Will Ensure Competition.

The Coalition agrees with the numerous commenters who have recognized the importance of both cable/LMDS and telephone company/LMDS cross-ownership restrictions. There is a fundamental need for these restrictions. It is imperative that LMDS be allowed to develop unfettered as a competitive force in the multichannel marketplace. There is absolutely no benefit to be obtained by allocating spectrum for LMDS, a potentially powerful new competitor to cable, and to then allow a cable system operator to participate in LMDS, where a very real risk exists that it could co-opt LMDS technology in order to frustrate the emergence of an independent system as a viable competitor. Such a decision is clearly at odds

with the 1992 Cable Act. Similarly, local exchange carriers should be restricted from providing video programming via LMDS consistent with the policies and rules set forth in the Commission's recent "video dialtone" proceeding.⁵

III. Application and Licensing Issues.

A. Service Areas.

The Coalition shares the concerns expressed by the majority of commenters over the use of Rand McNally's 487 Basic Trading Areas ("BTA") as proposed by the Commission. NPRM at ¶ 30-31. The Coalition believes the disadvantages of BTA's far outweigh the few possible advantages they may hold. Of primary concern is their tremendous size. In most cases, particularly the large metropolitan markets, these BTA's are simply too large to require an operator to build it's LMDS system, particularly within the short time frame proposed by the Commission.

The Coalition believes the use of the Metropolitan Statistical Area (MSA) and Rural Service Areas (RSA), used for licensing cellular radio, IVDS, and other radio services, is the best model for defining geographic service areas. The advantages of the MSA/RSA are numerous. The use of smaller service areas will satisfy the Commission's concern that all areas within the United States be encompassed. As recognized by most commenters, smaller service areas will produce more licensing opportunities for small

⁵ Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54 - 63.58, 7 FCC Rcd 5781 (1992).

businesses, entrepreneurs and minority-owned businesses. The Coalition firmly believes smaller service areas will foster broader participation without substantially delaying the provisions of LMDS service to consumers. Moreover, the use of smaller MSA/RSAs will lessen the construction and transactions costs associated with the larger BTA's. The cost of building LMDS systems will be immense. These costs will be directly proportional to the size of the LMDS service areas. The capital requirements for building and operating LMDS in service areas which are as immense as BTA's will exclude entrepreneurs, smaller firms and many minority-owned businesses from participating.

B. Build-Out Requirements.

As a means of deterring speculative applicants and expediting LMDS service to consumers, the Coalition supports in principle the Commission's proposal that LMDS licensees meet certain "build - out" requirements. The Commission has proposed that within three years of being granted a license, a licensee shall be capable of providing service to ninety percent (90%) of the population within its service area. NPRM at ¶ 32.

However, regardless of whether the Commission adopts the BTA or the widely supported MSA/RSA service area, the Commission's proposed build-out requirements should be relaxed. Like other multichannel distribution systems, LMDS construction is capital-intensive. It is impractical, and may be impossible, for many LMDS licensees to immediately finance a system capable of providing service to ninety percent (90%) of the population within the BTA

or MSA/RSA's. Therefore, the Coalition recommends the Commission adopt the following alternative schedule: (1) should the Commission adopt the BTA approach, LMDS licensees should be required to provide service to twenty five percent (25%) of the service area population within three years, fifty percent (50%) within five years and ninety percent (90%) within seven years; (2) should the Commission adopt the MSA/RSA approach, LMDS licensees should be required to provide service to fifty percent (50%) of the population within three years and ninety percent (90%) within five years. The Commission should also consider a slightly longer build-out schedule for the RSA's. These build-out requirements are more realistic and will not significantly undermine the Commission's stated goal of expediting service and deterring speculators.

The Coalition strongly believes that the use of lotteries will lead to far more desirable results than auctions. Lotteries are the most efficient and expeditious means available to allocate LMDS licenses. The Commission has significant experience to draw upon in drafting rules that will assure that the LMDS lotteries achieve the pro-competitive goals of this proceeding. The Commission also has proposed many of the devices necessary to assure that the negative aspects associated with lotteries in the past are avoided here. Moreover, the use of lotteries will ultimately lead to wider participation in LMDS and foster diversity of ownership in this new service. The Coalition believes that LMDS service will be greatly enhanced if entrepreneurs, smaller firm and minority interests are given equal footing in licensing with larger companies.

D. License Term.

The Coalition concurs with those commenters advocating use of a longer licensing term. The five-year license term is too short. As noted, constructing LMDS systems is capital-intensive. Lenders will be reluctant to finance LMDS systems unless there exist sufficient license duration to build the system, meet the demand for LMDS service, and operate profitably. A license term of ten years is more appropriate for this new service.

IV. Conclusion.

The outcome of the LMDS proceeding is crucial to the healthy expansion of the wireless cable industry. By adopting the set-aside format and other recommendations proposed herein the

Commission can both foster LMDS and support the developing wireless
cable industry to ensure its critical evolution into a mature